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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON MAURICE LACEY,

Defendant and Appellant.

C059896

(Super. Ct. No.
08F00635)

Following the denial of his motion to suppress, defendant Brandon Maurice Lacey entered a negotiated plea of no contest to one count of transporting cocaine base (Health & Saf. Code, § 11352, subd. (a)) and admitted a recidivist allegation (Health & Saf. Code, § 11351.5) in exchange for a prison term of seven years and the dismissal of the remaining charges. The court accepted the plea bargain and sentenced him in accordance with its terms.

On appeal, defendant argues the court erred in denying his motion to suppress, because the police did not have reasonable cause to detain his vehicle. We shall affirm.

FACTS

Defendant's motion to suppress cited the preliminary hearing testimony of one of the arresting officers and statements in the police report to the effect that officers stopped his car for nonfunctioning "tail lights." A defense investigator later went to the yard in which the vehicle was impounded and determined that the taillights were in fact functioning.

At the hearing on the motion, both officers testified that they had been driving southbound on Franklin Boulevard at night when they observed a car in front of them with a taillight that was nonfunctional and decided to conduct the traffic stop leading to defendant's arrest. Neither could remember which taillight was inoperative.

Although the officers activated the patrol car's emergency lights (which turned on the dashboard camera) and "chirped" the siren several times, defendant continued south on Franklin for a short distance, then turned onto a side street. He drove through a stop sign that was just before the entrance gate to the Phoenix Park complex. (The officers did not cite this failure to stop in their report as a basis for the vehicle stop.) In approaching defendant, the officers did not mention the reason for the stop. Defendant ignored the officers' command to show his hands and was placed in handcuffs. In a subsequent search, the officers found cocaine base on his person.

As one of the officers acknowledged, the video from the dashboard camera shows both bumper-mounted brake lights were working properly as defendant came to a stop. The auxiliary brake light in the rear window, however, was not functioning.

The car's owner and an employee at the impound yard both testified that "all" the lights were functioning. (The parties did not ask them to distinguish between the taillights and the auxiliary brake light.)

The trial court concluded that the officers' reference to taillights was generic, not a term of art, so the auxiliary light that clearly was not working in the video came within the term. It also cited defendant's failure to heed the stop sign as an additional basis for the detention.

DISCUSSION

I

A traffic stop is a species of detention for which police must articulate a reasonable suspicion of a violation of the Vehicle Code or some other law. (*United States v. Sharpe* (1985) 470 U.S. 675, 682 [84 L.Ed.2d 605]; *People v. Bell* (1996) 43 Cal.App.4th 754, 760-761.)

Defendant argues that the officers asserted nonfunctioning *taillights* as a basis for the traffic stop, not the auxiliary brake light in the rear window, and did not mention this basis when approaching defendant after stopping the car. He claims this demonstrates that the inoperative light was a mere post hoc pretext for the stop.

As defendant acknowledges, the validity of a detention does not turn upon an officer's subjective purpose, but rather on the objective circumstances known to the officer at the time.

(*People v. Sanders* (2003) 31 Cal.4th 318, 334.) He also acknowledges that a nonfunctioning auxiliary brake light is a basis for detaining a vehicle. (*In re Justin K.* (2002) 98 Cal.App.4th 695, 700.) He asserts, however, that the trial court was required to hold the officers to the literal meaning of the term "tail light," i.e., a bumper-mounted light, which the record does not support. He asserts the trial court's interpretation of their use of "tail light" to include the auxiliary brake light is a violation of the rule of lenity. (*People v. Coelho* (2001) 89 Cal.App.4th 861, 885.)

The rule of lenity is a tenet of *statutory* interpretation that does not have any bearing on a trial court's evaluation of the meaning a witness attributes to a term. The video from the patrol car, which we have reviewed, indisputably shows that the auxiliary brake light did not function along with the bumper brake lights as defendant's car eventually came to a stop. The employment of an imprecise choice of phrase in articulating the basis for the stop did not require the trial court to blind itself to the obvious meaning that the officers intended.

The critical question here is whether the facts and circumstances known to the officers were sufficient to create a reasonable suspicion that a traffic violation had occurred or was occurring. Defendant asserts the officers were not aware of the defective brake light when they made a vehicle stop based on

pretext and lies. However, the clarity of the video from the dashboard camera supports the trial court's finding that the officers merely provided an imprecise description of an equipment failure that was easy to discern and, indeed, difficult to miss. The defective brake light provided an adequate basis for the detention.

II

While this case was pending, appellate counsel notified us that he had filed a motion in the trial court in the first instance (although we note that we do have discretion to consider the issue in the first instance on appeal if it is not the sole issue (*People v. Mendez* (1999) 19 Cal.4th 1084, 1101; *People v. Acosta* (1996) 48 Cal.App.4th 411, 427) for additional presentence conduct credits pursuant to amendments to Penal Code section 4019 that went into effect January 25, 2010. We take judicial notice of the order of the trial court denying the motion, filed March 24, 2010.

However, pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we have deemed defendant to have raised the issue on appeal as well (without additional briefing) of his retroactive entitlement to additional presentence conduct credits under the present version of Penal Code section 4019. In our recent opinion in *People v. Brown* (Mar. 16, 2010, C056510) ___ Cal.App.4th ___, we concluded that the amendments apply to pending appeals. As defendant does not have a present or prior conviction for a violent or "serious" felony and is not subject to registration as a sex offender, he

is entitled to accrue work and conduct credits at the rate of two days for every four days served (§ 4019, subds. (b)(1) & (c)(1)), and thus a period of four days is deemed served for every two-day period of actual custody (§ 4019, subd. (f)). With 224 days of actual custody, defendant is now entitled to 224 days of conduct credits rather than 112. We will direct the trial court to amend the abstract accordingly.

DISPOSITION

The judgment is affirmed. The trial court is directed to apply an additional 112 days of presentence custody credit to defendant's sentence and to file an amended abstract of judgment with the Department of Corrections and Rehabilitation.

RAYE, Acting P. J.

We concur:

BUTZ, J.

CANTIL-SAKAUYE, J.